

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA

VS.

CR. NO. 3:06CR204-MEF

HENRY ERIK YAPIAS,
Defendant.

MOTION TO CONTINUE SENTENCING

COMES now the Defendant by and through counsel, and moves this Honorable Court to continue sentencing now set for February 15, 2007, and cites as grounds therefore as follows:

1. The U. S. Probation Officer has filed his draft Pre Sentence Report. In the report, the Probation Officer advises that he has requested psychological reports on the Defendant, however, same have not yet been received.

2. At the time of the interview with the Probation Officer, counsel was present and heard the Defendant relate numerous places and institutions that have treated the Defendant for psychological and/or emotional problems as well as drug use and abuse since a very early age. The Defendant related that he has been institutionalized on several occasions and is presently on psychotropic medication.

3. Counsel does not present to the Court a mental disease or defect issue. Counsel does present to the Court that due to the Defendant's drug and alcohol use from the age of about 12, his history of mental treatment from numerous sources, that a full picture of the Defendant's mental, psychological, and emotional status cannot be made without further information.

4. Previous counsel from the Federal Defender's Office discussed a Diminished Capacity downward departure request and such is mentioned in the Plea Agreement.

5. The undersigned was waiting for the Defendant's records requested by the Probation Officer before such a motion was filed. Now, however, the records have not been timely furnished to the Probation Officer and counsel does not have the information necessary to support such a departure as contemplated.

6. Upon interview it is obvious that something is amiss with the Defendant and his drug and alcohol use and abuse from a very, very early age with his extensive criminal history tends to support an inability to control his behavior in a socially acceptable manner. He appears to lack the capacity to conform his conduct to that required of a citizen.

7. Counsel submits that a full psychological assessment of the Defendant is necessary prior to sentencing. Counsel believes that with or without his prior treatment history and records, and it appears we are without, a current assessment is warranted.

PREMISE considered this Honorable Court is requested to order a psychological assessment of the Defendant, either by granting funds to counsel to retain a private psychologist or having the Bureau of Prisons evaluate the Defendant. In either case, the Court is requested to continue sentencing until such examination can be performed.

Respectfully submitted this the 25th day of January, 2007.

Sydney Albert Smith SMI098
ASB-3560-H70S
P. O. Drawer 389
Elba, AL 36323
334-897-3658
sydneyalbertsmith@charter.net

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing with the Clerk of the Court using the CM/ECF system which will send notifications of such filing to the following:

Chris Snyder, Assistant United States Attorney

Sydney Albert Smith